

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.6056 of 1997

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For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

MOHANBHAI SHANKARBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR NILESH A PANDYA for Petitioner
Shri C.C. Bhalja, AGP for respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/04/98

ORAL JUDGEMENT :

Rule. Shri C.C. Bhalja, learned AGP waives service of the rule.

2. This petition under Article 226 of the Constitution of India is filed for challenging the orders passed by the competent authority under Urban Land (Ceiling & Regulation) Act, 1976 ("the Act" for brevity) in ULC Declaration No.2659, Manjalpur SR 1871/ 7184, declaring 1879 sq. meters of land as excess vacant land

and the orders passed by the Urban Land Tribunal ("the Tribunal" for brevity) dismissing the appeal against the aforesaid order of the competent authority.

3. It is the case of the petitioner in these proceedings that the petitioner had challenged the aforesaid order of the competent authority by filing Appeal no.71 of 1985 before the Tribunal, but the petitioner was not served with a copy of the order passed by the Tribunal dismissing the appeal on the ground of delay. It is further the case of the petitioner that when the petitioner came to learn about the aforesaid order in 1994, the petitioner filed Appeal No.60 of 1994, which came to be dismissed on the ground that the Tribunal had already dismissed the petitioner's appeal on 30.12.1985. The petitioner has, therefore, filed the present appeal for challenging the aforesaid order of the competent authority as well as the order passed by the Tribunal in appeal.

4. This Court issued notice returnable on 23.3.1998 on the condition that the petitioner shall deposit an amount of Rs.2,000/-. The learned counsel for the petitioner states and it is not disputed by the other side that the petitioner has deposited the above amount of Rs.2,000/-, in pursuance of the above order. No affidavit in reply is filed to dispute the assertions made in the memo of petition. In view of the above, this Court will have to proceed on the basis that the petitioner was not served with the order dated 30.12.1985 passed by the Tribunal in Appeal No.71 of 1985.

5. Having heard the learned counsel for the parties and considering the fact that possession of the land in question is still with the petitioner as averred in para 10 of the petition, it will be just and proper to set aside the orders passed by the Urban Land Tribunal and to remand the matter to the Tribunal for hearing and deciding petitioner's Appeal No.71 of 1985 on merits. Since the order of the Tribunal is being set aside on the ground that the Tribunal should have taken a liberal view in the matter of condonation of delay, it would be just and proper to saddle the petitioner with the costs of this petition for the respondents, which are quantified at Rs.2,000/- (Rupees two thousand only). Accordingly the above amount of Rs.2,000/- deposited by the petitioner in this Court shall be permitted to be withdrawn by the respondents.

6. The petition is accordingly allowed. The order dated 30.12.1985 in Appeal No.71 of 1985 and the order

dated 11.8.1995 in Appeal No.60 of 1994 passed by the Tribunal are set aside. The matter is remanded to the Urban Land Tribunal for hearing and deciding Appeal No.71 of 1985 on merits. Appeal No.60 of 1994 shall stand disposed of on the ground that it is not maintainable in view of pendency of Appeal No.71 of 1985.

7. The learned counsel for the petitioner assures the Court that the petitioner will cooperate for expeditious disposal of the appeal.

8. Rule is made absolute. Costs payable by the petitioner to the respondents and quantified at Rs.2,000/and shall be treated to have been paid as stated above, with liberty to the respondents to withdraw the same.

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